

Department of Land and Natural Resources
Division of Boating and Ocean Recreation

Amendments to Chapters 13-240, 13-243, 13-245 and 13-256
Hawaii Administrative Rules

1. Section 13-240-5, Hawaii Administrative Rules, is amended by adding definitions to read as follows:

"§13-240-5 Definitions. As used in this part:***

"Diver's flag" means a red flag with a white diagonal running from the upper left hand corner to the lower right hand corner (from masthead to lower outside corner).

"Free diver" means a person who is using a mask and snorkel, other than for SCUBA diving, who submerges under water or breaks the surface of the water.

"Personal flotation device" is a technical term for a life preserver that has been approved and certified by the United States Coast Guard and capable of providing at least ninety per cent of factory-rated flotation capacity.

"SCUBA" means self-contained underwater breathing apparatus and includes all forms of self-contained underwater breathing apparatuses, e.g., re-breathers, open-circuit, semi-closed or closed circuit or surface-supplied breathing apparatuses."

[Eff 2/24/94 am] (Auth: HRS §§200-21, 200-22, 200-23, 200-24)
(Imp: HRS §§200-21, 200-22, 200-23, 200-24)

2. Section 13-243-1 is amended to read as follows:

"§13-243-1 Equipment required by vessels on state waters. (a) This chapter applies to all vessels that are propelled or controlled by machinery, sails, oars, paddles, poles, or another vessel, except Hawaiian design racing canoes, racing shells, rowing sculls, and racing kayaks. Navigational lights, sound producing devices, personal flotation devices, ventilation, backfire flame control, and distress signals shall conform to the standards set forth in U. S. Coast Guard Navigation Rules, COMDTINST M16672.2B, of August 17, 1990 and as revised thereafter; U. S. Coast Guard Boating Standards Manual COMDTINST M16761.2B, dated March 26, 1991 and as revised thereafter; 33 CFR Parts 175, 177, 181, and 183; and 46 CFR Part 25 as they existed on October 1, 1992 and as revised thereafter. The standards above are incorporated in this chapter by reference. Copies may be obtained from the 14th Coast Guard District. They are also available for inspection at the division of boating and ocean recreation, department of land and natural resources, 333 Queen St., Suite 300, Honolulu, Hawaii.

(b) Notwithstanding the exemptions outlined in subsection (a), no person shall operate or anchor offshore a recreational vessel thirty feet or less in length unless all children on board the vessel who are twelve years of age or younger wear a properly

fitted personal flotation device whenever the vessel is underway on the ocean waters or navigable streams of the state or when moored or anchored offshore in a non-designated offshore mooring area.

(c) All thrill craft operators and passengers shall be required to wear a personal flotation device when riding a thrill craft.

(d) For purposes of this section, the term "vessel," excludes surfboards.

(e) Fines and penalties shall be as provided in sections 200-14, 200-14.5, and 200-25, HRS. Prosecution of offenders shall be as provided by law." [Eff 2/24/94 am
(Auth: HRS §§200-4, 200-14, 200-14.5, 200-24, 200-25) (Imp: HRS §§200-4, 200-14, 200-14.5, 200-24, 200-25)]

3. Section 13-245-9, Hawaii Administrative Rules, is amended to read as follows:

§13-245-9 [Divers] Diver's flag. (a) A [red flag with a white diagonal running from the upper left hand corner to the lower right hand corner (from masthead to lower outside corner) and known as the "Divers] "diver's flag" [shall,] as defined by rule and measuring not less than twelve inches by twelve inches shall be required to be [when] displayed on the surface of the water[, indicate the presence of a] by any person or group of persons engaged in [underwater swimming] free diving or SCUBA diving [in the immediate area].

[(b) No person shall engage in underwater swimming or diving using self-contained underwater breathing apparatus or other artificial breathing device in navigable waters of the State without marking his position with the divers flag. No person when so engaged shall knowingly surface more than fifty feet from such marker, except in cases of emergency.]

(b) Notwithstanding subsection (a), a diver's flag measuring not less than twelve inches by twelve inches, shall be displayed on the highest point of the main structure of a non-motorized vessel that is sixteen feet or less in length overall in order to provide unobstructed view of the diver's flag from all directions when diving from the vessel.

(c) Notwithstanding subsection (a), in addition to the "Alpha flag," required by the United States Coast Guard, i.e., a blue flag with a white horizontal strip running from the upper left side to the lower left side, a diver's flag measuring not less than twenty inches by twenty-four inches, shall be displayed on the highest point of the main structure of any motorized or non-motorized vessel that is greater than sixteen feet in length overall in order to provide unobstructed view of the diver's flag from all directions when diving from the vessel.

[(c)] (d) No person shall engage in [underwater swimming] free diving or SCUBA diving, or display a diver's flag, in a manner [which] that shall unreasonably or unnecessarily interfere with vessels or with free and proper navigation of the waterways of the State. [Such diving or swimming in narrow or otherwise restricted channels shall constitute such interference, if unreasonable under the circumstances.]

(e) Except in cases of emergencies, free diving, swimming, or SCUBA diving within navigation channels shall be prohibited.

(f) All vessels shall be prohibited from approaching within one hundred feet of a displayed diver's flag or within fifty feet of a displayed diver's flag on navigable streams, except that vessels approaching a displayed diver's flag to conduct SCUBA, snorkeling, or free diving activities within the one hundred foot or fifty foot restricted area shall be allowed to do so provided that the vessel approaches at a speed of slow-no-wake.

_____[(d) Recognition of the divers flag by regulation shall not be construed as conferring any rights or privileges on its users, and its presence in a given water area shall not be construed in itself as restricting the use of the water area so marked. Operators of vessels shall, however, exercise precaution commensurate with conditions indicated.]

(g) Vessels navigating through navigation channels are exempt from the distance restriction described in subsection (f) but shall proceed at a speed of slow-no-wake through the navigation channel when a diver's flag is displayed adjacent to the navigation channel.

[(e)] (h) The [divers] diver's flag shall be displayed only when free diving or [underwater swimming] SCUBA diving is in progress, and its display in a water area when no diving is in progress in that area shall constitute a violation of these [regulations] rules.

(i) There shall be no subsurface distance restrictions from a dive flag, however, except in cases of emergencies, free divers or SCUBA divers shall be prohibited from surfacing more than one hundred feet away from the diver's flag in the ocean waters of the State and fifty feet in navigable streams.

(j) Authorized representatives of the department and life saving personnel are exempt from the distance restrictions of subsection (f) when performing functions related to their duties.

(k) Anyone violating any provision of this section shall be subject to fines and penalties as provided in sections 200-14, 200-14.5, and 200-25, HRS."

[Eff 2/24/94 am] (Auth: HRS §§200-2, 200-3, 200-4, 200-10, 200-14, 200-14.5, 200-24, 200-25) (Imp: HRS §§200-2, 200-3, 200-4, 200-10, 200-14, 200-14.5, 200-24, 200-25)

4. Section 13-256-16, Hawaii Administrative Rules, is amended to read as follows:

"§13-256-16 Thrill craft operations; general provisions. (a) No person under fifteen years of age shall operate a thrill craft. No person shall permit, or mislead another person into permitting, a person under fifteen years of age to operate a thrill craft.

(b) No person shall operate thrill craft within a marine life conservation district or marine natural area reserve.

(c) Thrill craft operations shall be curtailed in certain designated areas as described in subchapters two through eleven as necessary, to: 1) avoid possible adverse impacts on humpback whales or other protected marine life; 2) provide for increased public access;

3) reduce user conflicts; and 4) promote overall public safety.

(d) Effective January 2005, all recreational thrill craft operators shall be required to possess, and make available upon demand of enforcement personnel, a certificate of completion from an accredited institution of higher education on the safe use and operation of a thrill craft. The State may recognize reciprocity with other states, i.e., the National Association of State Boating Law Administrators (NASBLA) approved portion of the personal water craft course; however, all operators shall be required to complete the portions of a certificate course for Hawaii that includes, but is not limited to:

- (1) Local ocean safety principles and practices;
- (2) The historical, cultural, and customary practices of Hawaii's ocean users;
and
- (3) Any rules or laws pertaining to protected species and thrill craft operation in the State.

(e) All thrill craft operators and passengers shall be required to wear a personal flotation device in accordance with section 13-243-1." [Eff 2/24/94 am
(Auth: HRS §§200-22, 200-24) (Imp: HRS §§200-22, 200-24)

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5. Section 13-256-18, Hawaii Administrative Rules, is amended to read as follows:

Section 13-256-18 Commercial thrill craft operations, commercial high speed boating and water sledding operations. (a) No commercial thrill craft, high speed boating or water sledding activities shall be conducted on the waters of the State unless the owner has applied for and been issued a commercial operating area use permit for a designated commercial thrill craft, high speed boating or water sledding operating area, in addition to any commercial use permit required for state-owned facilities. No more than one commercial operating area use permit shall be issued to an owner to conduct commercial thrill craft, high speed boating or water sledding.

(b) Commercial thrill craft are limited to operating within a two hundred foot radius of the permitted designated location except as otherwise designated. The number of thrill craft permitted to operate within each commercial thrill craft operating area shall be as directed by the department, not to exceed a limit of six rental units and two safety units per area.

(c) No more than one vessel shall be permitted to operate under a commercial operating area use permit issued for high speed boating or water sledding.

(d) Access to and from designated areas shall be only from harbors and ramp facilities, or areas designated by a valid conservation district use permit issued by the Department of Land and Natural Resources or areas designated by the Department.

(e) Commercial thrill craft, high speed boating and water sledding operators shall proceed at a speed of slow-no-wake, or as otherwise posted, by the most direct route consistent with safety considerations. Thrill craft, high speed boating and water sledding operators shall not exceed a speed of slow-no-wake when within three hundred feet of the shoreline.

(f) No other activity is permitted in designated commercial thrill craft

operating areas or recreational and commercial water skiing or water sledding areas during the time of authorized operations for safety purposes.

(g) Commercial thrill craft operators shall be required to establish a safety instruction program for customers that includes, but is not limited to, the safe use of a thrill craft, boundaries of operating areas and the use of a personal flotation device."

[Eff 2/24/94 am] (Auth: HRS §§200-22, 200-24, 200-37) (Imp: HRS §§200-22, 200-24, 200-37)

6. Material, except source notes, to be repealed is bracketed. New material is underscored.

7. Additions to update source notes to reflect these amendments are not underscored.

8. These amendments to chapters 13-240, 13-243, 13-245, and 13-256, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ by the Board of Land and Natural Resources, and filed with the Office of the Lieutenant Governor.

Gilbert S. Coloma-Agaran, Chairperson
Board of Land and Natural Resources

APPROVED FOR PUBLIC HEARING:

Deputy Attorney General